IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1100 OF 2005

WITH

CIVIL APPLICATION NO.1346 OF 2005

Bansali Builders & Developers ..Appellant.

Vs.

Palaniswamy Mutty Swamy Harijan ..Respondent.

....

Mr.A.K.Abhayankar with Mr.P.R.Kadam for the Appellant.

Mr.Manor Upadhaye for the Respondent.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

5th December, 2005.

P.C. :

The Respondent has instituted a suit before the City Civil Court for (1) a declaration that the Appellant has illegally demolished a shop which was in the occupation of the Respondent; (2) a mandatory order permitting the Respondent to

reconstruct the shop and (3) a permanent injunction restraining the Appellant from creating any third party rights in respect of the shop. All applications before the City Civil Court for the grant of ad interim relief are placed for hearing before one Court viz. Court Room No.4. In the present case on 29th October, 2005, the Learned Judge presiding over Court Room No.4 declined to grant ad interim relief and placed the matter thereafter on 7th November, 2005 before Court Room No.1 which was the Court assigned to deal with cases of the description involved in the suit. On 7th November, 2005 the matter was according to the Appellant not shown on the Board of Court Room No.1 and the Learned Trial Judge presiding over that Court was absent. However, 7th November, 2005 an application was moved by the Respondent before Court Room No.4 once again (which had declined the application for ad interim relief on 29th October, 2005) and an ad interim order was passed in terms of prayer clause (b) in the absence of the advocate for the Appellant. There is a considerable degree of substance in the grievance which has been urged on behalf of the Appellant before the Court that the Trial Judge in Court Room No.4 having declined to grant ad interim relief in the first instance and the

matter having assigned thereafter to Court Room No.1, it was not appropriate on the part of the Respondent to move Court Room No.4 once again on 7th November, 2005. On behalf of the Appellant reliance has been placed on certain articles of agreement dated 8th January, 2005 under which it was alleged that the Respondent has surrendered his right, title and interest in the premises which form the subject matter of the suit against the payment of an amount of Rs.6 lacs. This is disputed on behalf of the Respondent. Since the Court is now informed that the Notice of Motion is to come up for hearing on 7th December, 2005, it will not be appropriate to delve into the merits at this stage. However, in my view, it would be necessary for this Court to set aside the order of the Trial Court dated 7th November, 2005 since that order came to be passed without due notice to the Appellant and by a Court which was not assigned with the proceedings, Court Room No.4 having declined ad interim relief on 29th October, 2005. However, on behalf of the Appellant, learned counsel has fairly stated on instructions that without prejudice to the rights and contentions of the Appellant, the Appellant shall maintain status quo in respect of the suit premises until 8th December, 2005 since the Motion is

to be taken up by the Learned Trial Judge on

that date. In the event that the Notice of Motion cannot be taken up by the Learned Trial Judge on account of the exigency of work on 7th December, 2005, it would be open to the Respondent to apply before the Learned Trial Judge for the grant of ad interim relief and any such application shall thereupon be considered on merits, without reference to the statement which has been made on behalf of the Appellant purely as a matter of an interim working arrangement until 8th December, 2005. The Appeal is accordingly allowed in the aforesaid terms and the order of the Trial Court dated 7th November, 2005 is quashed and set aside.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.